



40 CFR Part 282

[EPA-R03-UST-2020-0715; FRL-8854-01-R3]

District of Columbia: Final Approval of State Underground Storage Tank Program

Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the District of Columbia's Underground Storage Tank (UST) program submitted by the District of Columbia (District or State). This action also codifies EPA's approval of the District of Columbia's state program and incorporates by reference (IBR) those provisions of the District's regulations and statutes that EPA has determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives significant negative comments opposing this action by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If EPA receives significant negative comments opposing this action, EPA will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *E-mail:* thompson.khalia@epa.gov.

Instructions: Direct your comments to Docket ID No. **EPA-R03-UST-2020-0715**.

EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or e-mail. The Federal website, <https://www.regulations.gov>, is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <https://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by e-mail or phone.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information might not be publicly available, *e.g.*, CBI or other

information whose disclosure is restricted by statute. Publicly available materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Khalia Thompson, (215) 814-3348, thompson.khalia@epa.gov, RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103-2029.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to the District of Columbia’s Underground Storage Tank Program

A. Why are revisions to state programs necessary?

Section 9004 of RCRA authorizes EPA to approve state underground storage tank (UST) programs to operate in lieu of the Federal UST program. EPA may approve a state program if the state demonstrates, pursuant to section 9004(a), 42 U.S.C. 6991c(a), that the state program includes the elements set forth at section 9004(a)(1) through (9), 42 U.S.C. 6991c(a)(1) through (9), and provides for adequate enforcement of compliance with UST standards (section 9004(a), 42 U.S.C. 6991c(a)). Additionally, EPA must find, pursuant to section 9004(b), 42 U.S.C. 6991c(b), that the state program is “no less stringent” than the Federal program in the elements set forth at section 9004(a)(1) through (7), 42 U.S.C. 6991c(a)(1) through (7). States such as the District of Columbia (a jurisdiction recognized as a “State” pursuant to section 1004(31) of RCRA) that have received final UST program approval from EPA under section 9004 of RCRA must, in order to retain such approval, revise their approved programs when the controlling Federal or state statutory or regulatory authority is changed and EPA determines a revision is required. In 2015, EPA revised the Federal UST regulations and determined that states must revise their UST programs accordingly.

B. What decisions has EPA made in this rule?

On November 12, 2020, in accordance with 40 CFR 281.51, the District of Columbia submitted a complete program revision application seeking EPA approval for its UST program revisions (State Application). The District’s revisions correspond to the EPA final rule published

on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations. As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter requesting program approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of EPA and the implementing agency; an Attorney General's statement in accordance with 40 CFR 281.24 certifying to applicable State authorities; and copies of all relevant State statutes and regulations. EPA has reviewed the State Application and determined that the revisions to the District of Columbia's UST program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the District of Columbia's program provides for adequate enforcement of compliance (40 CFR 281.11(b)). Therefore, EPA grants the District of Columbia final approval to operate its UST program with the changes described in the State Application, and as outlined below in section I.G. of this preamble.

C. What is the effect of this approval decision?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already effective in the District of Columbia, and they are not changed by this action. This action merely approves the existing State regulations as meeting the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

EPA is publishing this direct final rule concurrently with a proposed rulemaking because EPA views this as a noncontroversial action and anticipates no significant negative comment. EPA is providing an opportunity for public comment now.

E. What happens if EPA receives comments that oppose this action?

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" Section of this *Federal Register* that serves as the proposal to approve the State's UST program revisions, providing opportunity for public comment. If EPA receives significant

negative comments that oppose this approval, EPA will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. EPA will not make any further decision on the approval of the State program changes until it considers any significant negative comment received during the comment period. EPA will address any significant negative comment in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has the District of Columbia previously been approved?

On July 9, 1997, the EPA finalized a rule approving the District of Columbia's UST program, effective August 8, 1997 (62 FR 36698), to operate in lieu of the Federal program. On May 4, 1998, EPA corrected the effective date to May 4, 1998 (63 FR 24453). EPA has not codified the District of Columbia's approved program prior to this action.

G. What changes is EPA approving with this action?

On November 12, 2020, in accordance with 40 CFR 281.51, the District of Columbia submitted a complete application for final approval of its UST program revisions adopted on January 24, 2020, effective February 21, 2020. EPA has reviewed the District's UST program requirements and determined that such requirements are no less stringent than the Federal regulations and that the criteria set forth in 40 CFR part 281 subpart C are met. As part of the State Application, the Attorney General for the District of Columbia certified that the laws and regulations of the District of Columbia provide adequate authority to carry out a program that is "no less stringent" than the Federal requirements in 40 CFR part 281. EPA is relying on this certification in addition to the analysis submitted by the District in making our determination. EPA now makes an immediate final decision, subject to receipt of any significant negative written comments that oppose this action, that the District of Columbia's UST program revisions satisfy all of the requirements necessary to qualify for final approval. Therefore, EPA grants the District of Columbia final approval for the following program changes:

Required Federal Element	Implementing State Authority
40 CFR 281.30, New UST Systems and Notification	20 DCMR 5502.2, 5507, 5600, 5602.1, 5700-5702, 5704-5706, 5803, 6002.2, 6003.6, 6011.2
40 CFR 281.31, Upgrading Existing UST Systems	20 DCMR 5507.7, 5700, 5800-5804
40 CFR 281.32, General Operating Requirements	20 DCMR 5502.2(c), 5601.6, 5602, 5603.1, 5603.4, 5604, 5801, 5900-5904, 6001
40 CFR 281.33, Release Detection	20 DCMR 5507.2-.3, 5702.4, 5704.5, 6000-6013
40 CFR 281.34, Release Reporting, Investigation, and Confirmation	20 DCMR 6201-6203, 6601.1
40 CFR 281.35, Release Response and Corrective Action	20 DCMR 6202.4, 6203-6211
40 CFR 281.36, Out-of-service Systems and Closure	20 DCMR 5507.13, 6100-6102
40 CFR 281.37, Financial Responsibility for USTs Containing Petroleum	20 DCMR 6700-6715
40 CFR 281.38, Lender Liability	20 DCMR 6200.4
40 CFR 281.39, Operator Training	20 DCMR 5602.3, 6502-6503

The State also demonstrates that its program provides adequate enforcement of compliance as described in 40 CFR 281.11(b) and part 281, subpart D. The District of Columbia's lead implementing agency, the Department of Energy and Environment (DOEE), has broad statutory and regulatory authority with respect to USTs to regulate installation, operation, maintenance, closure and UST releases, and to issue orders. The statutory and regulatory authority is found in the District of Columbia Code at Sections 8-113.01-12 and in the District of Columbia Municipal Regulations (DCMR) at 20 DCMR Sections 5500-7099.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following District requirements are considered "broader in scope" than the Federal program:

- The District may regulate substances designated by the Mayor in addition to those regulated under the Federal program. DC Code § 8-113.01(7)(C).
- The District regulates tanks that store heating oil for consumptive use on the premises where stored under 20 DCMR §§ 5503.1-.2, 5703. Such tanks are excluded from the Federal definition of underground storage tanks.
- The District regulates any UST associated with equipment or machinery that contains regulated substances for operational purposes (such as hydraulic lift tanks and electrical equipment tanks) and any UST system with a capacity of one hundred ten (110) gallons or less under 20 DCMR § 5504. Such tanks and tank systems are excluded from the requirements of the Federal regulations.
- The District regulates persons who are not owners or operators of USTs. *See, e.g.*, DC Code § 8-113.01(9)(A)(ii)-(v), .02(f) and (g), 113.03, 113.08(d), and 20 DCMR Chapters 56, 59, 61, 62, and 70.
- The District requires owners or operators of USTs undergoing installation, upgrade, repair or closure to obtain a building permit prior to such activity under 20 DCMR §§ 5500.2, 5603.5, 6210.8 and to comply with fire and construction codes under 5500.1(c) and (d), respectively.
- The District charges fees for registration, certification, installation, closure-in-place or removal. DC Code § 8-113.06(c), (d), 8-113.12(a)(9), 20 DCMR §§ 5601, 5605, and 6501.
- The District requires contractor licensure and certification of persons other than installers. DC Code § 8-113.06(a), 20 DCMR §§ 6500.1-.4, .6-.10, 6501.

In accordance with 40 CFR 281.12(a)(3)(ii), the additional coverage listed above is not part of the federally-approved program and is not federally enforceable.

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved program into the Code of Federal Regulations (CFR). Section 9004(b) of RCRA, as amended, allows EPA to approve state UST programs to operate in lieu of the Federal program. EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that EPA will enforce under sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of District of Columbia's UST program?

EPA has not previously incorporated by reference the District of Columbia's UST program. In this document, EPA is amending 40 CFR 282.58 to include the approved revised program.

C. What codification decisions has EPA made in this rule?

Incorporation by reference: In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the District of Columbia statutes and regulations described in the amendments to 40 CFR part 282 set forth below. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 3 office (see the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

One purpose of this rule is to codify the District of Columbia's approved UST program. The codification reflects the State program that will be in effect at the time EPA's approved revisions to the District's UST program addressed in this direct final rule become final. If,

however, EPA receives any significant negative comment opposing the proposed rulemaking then this codification will not take effect, and the State rules that are approved after EPA considers public comment will be codified instead. This rule incorporates by reference the District of Columbia's UST statutes and regulations and clarifies which of these provisions are included in the approved and federally enforceable program. By codifying the approved District of Columbia program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the District of Columbia program.

EPA is incorporating by reference the District of Columbia approved UST program in 40 CFR 282.58. Section 282.58(d)(1)(i)(A) and (B) incorporates by reference for enforcement purposes the State's statutes and regulations.

Section 282.58 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA. These documents are not incorporated by reference.

D. What is the effect of District of Columbia's codification on enforcement?

The EPA retains the authority under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in approved States. If EPA determines it will take such actions in the District of Columbia, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State's authorized analogs to these provisions. Therefore, EPA is not incorporating by reference such approved District of Columbia's procedural and enforcement authorities. Section 282.58(d)(1)(ii) of 40 CFR lists those approved District of Columbia authorities that would fall into this category.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally-approved State program. Such provisions are not part of the RCRA

Subtitle I program because they are “broader in scope” than Subtitle I of RCRA. 40 CFR 281.12(a)(3)(ii) states that where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not a part of the federally-approved program. As a result, State provisions that are “broader in scope” than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.58(d)(1)(iii) lists for reference and clarity the District of Columbia’s statutory and regulatory provisions that are “broader in scope” than the Federal program and which are not, therefore, part of the approved program being codified in this action. Provisions that are “broader in scope” cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order Reviews

This action only applies to the District of Columbia’s UST Program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable Executive Orders (EOs) and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action approves and codifies State requirements for the purpose of RCRA section 9004 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB.

B. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as

described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). Currently there are no federally recognized tribes in the District of Columbia. Therefore, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

C. Executive Order 13132: Federalism

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves and codifies State requirements as part of the State RCRA underground storage tank program without altering the relationship or the distribution of power and responsibilities established by RCRA.

D. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks.

E. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

F. National Technology Transfer and Advancement Act

Under RCRA section 9004(b), EPA grants a State’s application for approval as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

G. Executive Order 12988: Civil Justice Reform

As required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

H. Executive Order 12630: Governmental Actions and Interference with Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

I. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, because it approves pre-existing State rules that are no less stringent than existing Federal requirements, and imposes no

additional requirements beyond those imposed by State law. For these reasons, this rule is not subject to Executive Order 12898.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Incorporation by reference, Insurance, Intergovernmental relations, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control, Water supply.

Adam Ortiz,
Regional Administrator,
EPA Region 3.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Add § 282.58 to read as follows:

§ 282.58 District of Columbia State-Administered Program.

(a) The District of Columbia is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the District of Columbia's Department of Energy and Environment's predecessor agency, the Department of Consumer and Regulatory Affairs, was approved by EPA pursuant to 42 U.S.C. 6991c and 40 CFR part 281 of this chapter. EPA approved the District of Columbia underground storage tank program on July 9, 1997, and approval was effective on May 4, 1998. A subsequent program revision application was approved by EPA and became effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) The District of Columbia has primary responsibility for administering and enforcing its federally-approved underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, regardless of whether the State has taken its own actions, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, the District of Columbia must revise its approved program to adopt new changes to the Federal Subtitle I program which makes it more stringent, in accordance with Section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If the District of Columbia obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the *Federal Register*.

(d) The District of Columbia has final approval for the following elements of its program application originally submitted to EPA and approved on July 9, 1997, and effective May 4, 1998, and the program revision application approved by EPA, effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(1) *State statutes and regulations—* (i) *Incorporation by reference.* The provisions cited in this paragraph, and listed in Appendix A to Part 282, with the exception of the provisions cited in paragraphs (d)(1)(ii) and (iii) of this section, are incorporated by reference as part of the approved underground storage tank program in accordance with Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the District of Columbia’s regulations and statutes that are incorporated by reference in this paragraph from District of Columbia’s Underground Storage Tank Branch, Toxic Substances Division, Department of Energy and Environment, 1200 First Street, NE, 5th Fl., Washington D.C. 20002 (phone number 202-535-2326). You may inspect all approved material at the EPA Region 3 office, 1650 Arch Street, Philadelphia, PA 19103-2029 (phone number 215-814-3348) or the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, e-mail fr.inspection@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “District of Columbia Statutory Requirements Applicable to the Underground Storage Tank Program,” March 1991.

(B) “District of Columbia Regulatory Requirements Applicable to the Underground Storage Tank Program,” February 2020.

(ii) *Legal basis.* EPA evaluated the following statutes and regulations, which are part of the approved program, but which are not being incorporated by reference for enforcement purposes, and do not replace Federal authorities:

(A) The statutory provisions include:

(1) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter VII, Underground Storage Tank Management Act, Sections: 8-113.04; 8-113.06(a); 8-113.07; 8-113.08; 8-113.09; 8-113.10; 8-113.12.

(2) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter II, Water Pollution Control, Sections: 8-103.10(c); 8-103.20.

(3) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1A, Subchapter I, General, Sections: 8-151.07; 8-151.08(6).

(B) The regulatory provisions include:

(1) District of Columbia Municipal Regulations, Title 20, Chapters 55-67 and 70, Underground Storage Tank Regulations, Sections: 5501.1 as to regulated substance delivery person or company; 5601.7; 5800.3; 6300-6302; 6600-6605, including 6602.7 (Delivery Prohibition).

(2) District of Columbia Municipal Regulations, Title 16, Consumers, Commercial Practices, & Civil Infractions - Chapters 32 and 40; Chapter 32, Section 3201; Chapter 40, Section 4008.

(3) District of Columbia State Rules - Superior Court Rules of Civil Procedure - IV. Parties, Super. Ct. Civ. R. 24 - Intervention.

(iii) *Provisions not incorporated by reference.* The following statutory and regulatory provisions are “broader in scope” than the Federal program, are not part of the approved program, and are not incorporated by reference herein. These provisions are not federally enforceable:

(A) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter VII, Underground Storage Tank Management, Sections: 8-113.01(7)(C) and (9)(A)(ii)-(v); 8-113.02(f) and (g) insofar as (g) includes persons who are not owners or operators of underground storage tanks; 8-113.03(a) insofar as includes persons who are not owners or operators of underground storage tanks; 8-113.06(b)-(d) as to fees.

(B) District of Columbia Municipal Regulations, Title 20, Chapters 55-67 and 70, Underground Storage Tank Regulations, Sections: 5500.1(c)-(d); 5500.2; 5501.1 as to persons who are not owners or operators of underground storage tanks; 5503.1-.2 insofar as regulates tanks that store heating oil for use on the premises where stored; 5504; 5600.1(b); 5601.1 insofar as regulates tanks that store heating oil for use on the premises where stored; 5601.2-.3 insofar as requires payment of fees; 5603.5 insofar as requires permits; 5604 insofar as includes persons who are not owners or operators of underground storage tanks, 5604.3-.4; 5605; 5606; 5700.4, .7, and .8(b); 5703; 5706.1 insofar as requires compliance with District fire code; 5900.1-.3, .7, as to “agent in charge,” .10 as to “responsible party; 5904.5; 6003.4; 6100.4; 6202.2; 6210.8 insofar as requires permits; 6212; 6500.1-.4, .6-.10; 6501; 7099.1 as to the definitions of “agent in charge,” “authorized agent,” “voluntary remediating party,” and “voluntary remediation,” and the definitions of “real property owner” and “responsible party” insofar as each definition includes persons who are not owners or operators of underground storage tanks.

(2) *Statement of legal authority.* “Attorney General’s Statement” signed by the Attorney General on September 18, 2020, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Adequate Enforcement Procedures” submitted as part of the program revision application for approval on November 12, 2020, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the program revision application for approval on November 12, 2020, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement*. The Memorandum of Agreement between EPA Region 3 and the District of Columbia Department of Energy and the Environment, signed by the EPA Regional Administrator on November 25, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Amend appendix A to part 282 by adding the entry for District of Columbia to read as follows:

APPENDIX A TO PART 282—STATE REQUIREMENTS INCORPORATED BY REFERENCE IN PART 282 OF THE CODE OF FEDERAL REGULATIONS

* * * * *

District of Columbia

(a) The statutory provisions include:

(1) Code of the District of Columbia, Division I, Title 8, Subtitle A, Chapter 1, Subchapter VII, Underground Storage Tank Management, sections 8-113.01-113.12

Section 8-113.01. Definitions, *except (7)(C) and (9)(A)(ii)-(v)*

Section 8-113.02. Notification, *except (f)*

Section 8-113.03. Release notification requirements, *except (a) as to persons who are not owners or operators of underground storage tanks*

Section 8-113.06. Certification, registration and licensing, *except (b) as to fees; (c)-(d)*

(2) [Reserved]

(b) The regulatory provisions include:

(1) District of Columbia Municipal Regulations, Title 20, Chapters 55-67 and 70, Underground Storage Tanks

Chapter 55 Underground Storage Tanks - General Provisions

Section 5500 Compliance with District Laws, *except 5500.1(c)-(d); 5500.2*

Section 5501 Applicability of UST regulations, *except 5501.1 as to persons who are not owners or operators of underground storage tanks*

Section 5502 Partial Applicability of UST Regulations to Particular UST Systems

Section 5503 Partial Applicability of UST Regulations to Heating Oil Tanks, *except 5503.1-.2*

Section 5505 Applicability to Emergency Generator UST Systems

Section 5506 Industry Codes and Standards

Section 5507 Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems

Chapter 56 Underground Storage Tanks - Notification, Registration, Recordkeeping, and Public Information

Section 5600 Notice of the Existence, Use, Purchase, Sale or Change in Service of an UST System, *except as to persons who are not owners or operators of underground storage tanks; 5600.1(b)*

Section 5601 Registration, *except 5601.1 as to tanks that store heating oil for use on the premises where stored; 5601.2-.3 as to payment of fees; 5601.10 as to persons who are not owners or operators of underground storage tanks*

Section 5602 Recordkeeping and Reports

Section 5603 Notice of Installation, Removal, Closure-in-Place, Repair, Upgrade, and Testing, *except 5603.5 insofar as requires permits*

Section 5604 Notice of Sale of Real Property, *except as to persons who are not owners or operators of underground storage tanks, 5604.3-.4*

Section 5607 Public Record Information

Chapter 57 Underground Storage Tanks - New Tank Performance Standards

Section 5700 Existing and New UST Systems - General Provisions, *except 5700.4, .7, .8(b)*

Section 5701 New Petroleum UST Systems

Section 5702 New Hazardous Substance UST Systems

Section 5704 New Piping for UST Systems

Section 5705 Spill and Overfill Prevention Equipment for New and Upgraded UST Systems

Section 5706 Installation of New UST Systems, *except 5706.1 insofar as requires compliance with District fire codes*

Chapter 58 Underground Storage Tanks - Operation and Maintenance of USTs

Section 5800 Existing UST System Upgrades

Section 5801 Tank Upgrades

Section 5802 Existing UST System Piping Upgrades

Section 5803 Spill and Overfill Prevention Equipment Upgrades

Section 5804 Tank Tightness Testing upon Upgrade

Chapter 59 Underground Storage Tanks - Operation and Maintenance of USTs

Section 5900 Spill and Overfill Control, *except 5900.1-.3, .7 as to “agent in charge;” .10 as to “responsible party”*

Section 5901 Tank Corrosion Protection

Section 5902 Repair or Replacement of UST Systems

Section 5903 Compatibility

Section 5904 Walkthrough Inspections, *except 5904.5*

Chapter 60 Underground Storage Tanks - Release Detection

Section 6000 Release Detection – General Provisions

Section 6001 Release Detection Recordkeeping

Section 6002 Release Detection for Hazardous Substance UST Systems

Section 6003 Release Detection for Petroleum UST System Tanks, *except 6003.4*

Section 6004 Release Detection for Petroleum UST System Piping

Section 6005 Inventory Control and Statistical Inventory Reconciliation

Section 6006 Manual Tank Gauging

Section 6007 Tank Tightness Testing

Section 6008 Automatic Tank Gauging

Section 6009 Vapor Monitoring

Section 6010 Groundwater Monitoring

Section 6011 Interstitial Monitoring

Section 6012 Statistical Inventory Reconciliation

Section 6013 Other Methods of Release Detection

Chapter 61 Underground Storage Tanks - Closure

Section 6100 Temporary Closure, *except 6100.4*

Section 6101 Permanent Closure and Change-In-Service

Section 6102 Previously Closed UST Systems

Section 6103 Closure Records

Chapter 62 Underground Storage Tanks - Reporting of Releases, Investigation, Confirmation, Assessment, and Corrective Action

Section 6200 Obligations of Responsible Parties - Releases, Spills, and Overfills

Section 6201 Reporting and Cleanup of Spills and Overfills

Section 6202 Reporting of Releases of Regulated Substances, *except 6202.2*

Section 6203 Site Investigation, Confirmation of Release, Initial Abatement, and Initial Site Assessment

Section 6204 Removal of Free Product

Section 6205 Comprehensive Site Assessment

Section 6206 Risk-Based Corrective Action (RBCA) Process

Section 6207 Corrective Action Plan and its Implementation

Section 6208 Tier 0 Standards

Section 6209 Tiers 1 and 2 Standards

Section 6210 No Further Action and Case Closure Requirements, *except 6210.8 insofar as requires permits*

Section 6211 Public Participation in Corrective Action

Chapter 64 Underground Storage Tanks - Corrective Action by the District and Cost Recovery

Section 6400 Corrective Action by the District

Section 6401 Cost Recovery

Chapter 65 Underground Storage Tanks - Licensing, Certification, Operator Requirements, and Operator Training

Section 6500 Licensing and Certification of UST System Installers, Removers, Testers, and Technicians, *except 6500.1-.4, .6-.10*

Section 6502 Operator Designation

Section 6503 Operator Training and Training Program Approval

Chapter 67 Underground Storage Tanks - Financial Responsibility

Section 6700 Petroleum UST Systems

Section 6701 Financial Responsibility Mechanisms

Section 6702 Financial Responsibility Records and Reports

Section 6703 Financial Test of Self-Insurance

Section 6704 Financial Test of Self-Insurance: Test A

Section 6705 Financial Test of Self-Insurance: Test B

Section 6706 Guarantees

Section 6707 Insurance and Risk Retention Group Coverage

Section 6708 Surety Bonds

Section 6709 Letter of Credit

Section 6710 Private Trust Funds

Section 6711 Standby Trust Funds

Section 6712 Drawing on Financial Assurance Mechanism

Section 6713 Replenishment of Guarantees, Letters of Credit, or Surety Bonds

Section 6714 Cancellation or Non-Renewal of Financial Assurance

Section 6715 Bankruptcy or Incapacity

Appendix 67-1 Certification of Financial Responsibility

Appendix 67-2 Financial Test of Self Insurance Letter from Chief Financial Officer

Appendix 67-3 Guarantee

Appendix 67-4 Certificate of Insurance

Appendix 67-5 Endorsement

Appendix 67-6 Performance Bond

Appendix 67-7 Irrevocable Standby Letter of Credit

Appendix 67-8 Trust Agreement

Appendix 67-9 Certification of Valid Claim

Chapter 70 Underground Storage Tanks - Definitions

Section 7099 Definitions, *except 7099.1 the definitions of “agent in charge,” “authorized agent,” “voluntary remediating party,” and “voluntary remediation” and the definitions of “real property owner” and “responsible party” insofar as each definition includes persons who are not owners or operators of underground storage tanks*

(2) [Reserved]

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